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U.S.D.C. Atlanta

MAR 19 2003

LUTHER D. THOMAS, Clerk
By: [signature]
Deputy Clerk

ORIGINAL

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GLENN SIMPSON, Plaintiff, v. CAROLINA BUILDERS CORPORATION, d/b/a STOCK BUILDING SUPPLY, Defendant.	)	CIVIL ACTION NO.: 1:03-CV-0758-HTW

NOTICE OF REMOVAL

Defendant Carolina Builders Corporation ("Carolina Builders"), by and through its undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and Fed. R. Civ. P. 11, files the instant notice to remove this action to this Court from the State Court of Fulton County, State of Georgia. In support of this removal, Carolina Builders respectfully shows the following:

1. Plaintiff Glenn Simpson is an individual residing in Forsyth County, Georgia. (Complaint ¶ 3.) Upon information and belief, Plaintiff is a citizen and resident of the State of Georgia for purposes of 28 U.S.C. §§ 1332 and 1441. Id.

2. Carolina Builders is a foreign corporation incorporated in the State of North Carolina with its principal

FORMS RECEIVED
Consent To US Mag. ✓
Pretrial Instructions ✓
Title VII NTC

Night drop

place of business at 4403 Bland Road, Raleigh, North Carolina 27609.

3. Plaintiff initiated this action on February 18, 2003, by filing a Complaint entitled Glenn Simpson v. Carolina Builders Corporation d/b/a Stock Building Supply, Civil Action No. 03-VS-045442C, in the State Court of Fulton County, State of Georgia, asserting contract and tort claims, and requesting monetary and equitable relief, regarding sales commissions to which he is allegedly entitled. (Complaint, passim.) Plaintiff seeks compensatory and punitive damages. (Prayer for Relief ¶ 2.) Plaintiff also seeks actual damages of at least $375,000.00. (Complaint ¶ 38; Prayer for Relief ¶ 3.)

4. Pursuant to 28 U.S.C. §§ 1332(a) and 1441(b), this Court has original jurisdiction over this action because the action is between citizens of different states and the amount in controversy exceeds $75,000.00, exclusive of interest and costs.

5. On February 20, 2003, Carolina Builders was served with a summons and copy of Plaintiff's Complaint. Therefore, this Notice of Removal is filed timely with this Court pursuant to 28 U.S.C. § 1446(b).

6. True and correct copies of all process, pleadings, and orders served on Carolina Builders are attached hereto as Exhibits "A" and "B," respectively.

7. Carolina Builders promptly will file a removal notice, together with a copy of the instant Notice of Removal, with the Chief Clerk of the State Court of Fulton County, State of Georgia, and will serve written notice of the same on counsel of record for Plaintiff.

WHEREFORE, for the foregoing reasons, Carolina Builders respectfully requests that this action proceed in this Court pursuant to 28 U.S.C. §§ 1332, 1441 and 1446.

Respectfully submitted this 19th day of March, 2003.

HUNTON & WILLIAMS

By: ______________________
Benjamin F. Johnson IV
Georgia Bar No. 395405

Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 888-4000
(404) 888-4190 (telecopy)

OF COUNSEL:

A. Todd Brown
Jacqueline M. Yount
HUNTON & WILLIAMS
Bank of America Plaza
Suite 3500
101 South Tryon Street
Charlotte, North Carolina 28280
(704) 378-4700
(704) 378-4890 (telecopy)

Attorneys for Carolina Builders Corporation

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I have this date served a true and correct copy of the foregoing **NOTICE OF REMOVAL** upon counsel of record for Plaintiff by depositing same in the United States mail, with adequate first class postage affixed thereto, addressed as follows:

Baylor B. Banks, Esq.
3340 Peachtree Road
Suite 325
Atlanta, Georgia 30326

This 19th day of March, 2003.

Benjamin F. Johnson IV
Georgia Bar No. 395405

HUNTON & WILLIAMS
Bank of America Plaza, Suite 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216
(404) 888-4000
(404) 888-4190 (telecopy)

United States District Court ★ Northern District of Georgia ★

EXHIBIT / ATTACHMENT

A

(To be scanned in place of tab)

RECEIVED

FEB 2 1 2003

CT System

Service of Process Transmittal Form
Atlanta, Georgia

02/20/2003

Via Federal Express (2nd Day)

TO: A. Todd Brown
Hunton & Williams
One NationsBank Plaza - Suite 3500
101 South Tryon Street
Charlotte, NC 28280

RE: **PROCESS SERVED IN GEORGIA**

FOR Carolina Builders Corporation Domestic State NC

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION: Glenn Simpson, Pltf vs Carolina Builders Corporation d/b/a Stock Building Supply, Deft

2. DOCUMENT(S) SERVED: Summons and Complaint

3. COURT: State Court, Fulton County, GA
Case Number 03VS045442

4. NATURE OF ACTION: Seeking in excess of $375,000.00 - Breach of Contract, Fraud, Unjust Enrichment, etc in regards to said Commissions

5. ON WHOM PROCESS WAS SERVED: CT Corporation System, Atlanta, Georgia

6. DATE AND HOUR OF SERVICE: By Process server on 02/20/2003 at 12:16

7. APPEARANCE OR ANSWER DUE: 30 days after service

8. ATTORNEY(S): 404/ 266-9195
Baylor B Banks, Atty
3340 Peachtree Rd., Suite 325
Atlanta, GA 30326

9. REMARKS: Served by the Marshal

SIGNED CT Corporation System

PER Cindy J. Zidack /MP
ADDRESS 1201 Peachtree Street,N.E.
Atlanta, GA 30361
SOP WS 0005158216

Information contained on this transmittal form is recorded for C T Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information that can be obtained from the documents themselves. The recipient is responsible for interpreting the documents and for taking the appropriate action.

EXHIBIT

A

DO NOT WRITE IN THIS SPACE

COPY

GEORGIA
FULTON COUNTY

STATE COURT OF FULTON COUNTY
(Civil Division)

03VS045442
C

GLENN SIMPSON

(Plaintiff's Name and Address)
vs.

~~CAROLINA BUILDERS CORPORATION d/b/a/~~
[redacted]

(Defendant's Name and Address)

TYPE OF SUIT	AMOUNT OF SUIT	
☐ Account	Principal	$ ______
☐ Contract		
☐ Note	Interest	$ ______
☐ Tort		
☐ Trover	Atty Fees	$ ______
☐ Special Lien		
☐ Foreign Judgment	Ct. Costs	$ ______
☐ Personal Injury		

SUMMONS

TO THE ABOVE NAMED-DEFENDANT:

You are hereby required to file with the Clerk of said court and to serve a copy on the Plaintiff's Attorney, or on Plaintiff if no Attorney, to-wit:

Baylor B. Banks, Esq.
(Name)
3340 Peachtree Road, NE, #325, Atlanta, GA 30326
(Address)
(404) 266-9195
(Phone No.)

an answer to the complaint which is herewith served on you, within (30) days after service on you, exclusive of the day of service. If you fail ~~to do~~ so, judgment by default will be taken against you for the relief demanded in the complaint, plus cost of this action.
This FEB 18 '03

Deputy Clerk

DEFENSE MAY BE MADE, AND JURY TRIAL DEMANDED, if desired, in the Clerk's Office at **TG100, 185 Central Avenue, SW, (Between MLK, Jr. Drive and Mitchell Street), Atlanta, Georgia 30303.**

If the sum claimed in the suit, or value of the property sued for, is $300.00 or more Principal, the defendant must admit or deny the paragraphs of plaintiff's petition by making written Answer. Such paragraphs undenied will be taken as true. If the plaintiff's petition is sworn to, or if suit is based on an unconditional contract in writing, then the **DEFENDANT'S ANSWER MUST BE SWORN TO.**

If the principal sum claimed in the suit, or value of the property sued for, is less than $300.00 and is on a note, unconditional contract, account sworn to, or the petition sworn to, defense must be made by filing a sworn Answer setting up the facts relied on as a defense.

SERVED: This 20 day of Feb, 2003

DEPUTY MARSHAL STATE COURT OF FULTON COUNTY

(Staple to front of SERVICE COPY of complaint)

14-014-1094

United States District Court ★ Northern District of Georgia ★

EXHIBIT / ATTACHMENT

B

(To be scanned in place of tab)

STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

GLENN SIMPSON,

Plaintiff,

v.

CAROLINA BUILDERS CORPORATION d/b/a STOCK BUILDING SUPPLY

Defendant.

CIVIL ACTION FILE NO. ___________

COMPLAINT FOR DAMAGES PURSUANT TO GEORGIA LAW OF STATUTORY PROMISSORY ESTOPPEL, BREACH OF CONTRACT, QUANTUM MERUIT, UNJUST ENRICHMENT, FRAUD, AND EQUITABLE ESTOPPEL

JURY TRIAL DEMANDED

COMES NOW, PLAINTIFF GLENN SIMPSON ("Simpson") and hereby submits the following for the Court's consideration:

JURISDICTION AND VENUE

1.

This Court has subject matter jurisdiction pursuant to O.C.G.A. § 15-7-4(2) because this is a civil action.

2.

Venue is proper pursuant to O.C.G.A. § 14-2-510(b)(1) because DEFENDANT CAROLINA BUILDERS CORPORATION d/b/a STOCK BUILDING SUPPLY ("Carolina Builders")'s registered agent, CT Corporation, maintains its office in Fulton County at 1201 Peachtree Street, Atlanta, Georgia 30361.

PARTIES

3.

Plaintiff Simpson is a citizen of Georgia residing in Forsyth County.

EXHIBIT B

4.

Defendant Carolina Builders is a foreign profit corporation organized under the laws of North Carolina with its corporate offices located at 4403 Bland Road, Raleigh, North Carolina 27609. Carolina Builders may be served through its registered agent, CT Corporation, 1201 Peachtree Street, Atlanta, Georgia 30361.

FACTUAL ALLEGATIONS

5.

Carolina Builders is in the building supplies business.

6.

In Georgia, Carolina Builders does business as Stock Building Supply. The greater Atlanta corporate offices for Stock Building Supply are located at 3386 Lawrenceville Highway, Tucker, Georgia 30084.

7.

During the approximate time period of 1983 through 2001, Simpson was employed by Stock Building Supply and its corporate predecessors as an outside salesman.

8.

During the approximate time period of 1983 through 2001, Simpson earned sales commissions of three percent (3%) on sales of interior trim, exterior trim, windows, siding, roof trusses, floor trusses, interior doors, exterior doors, locks, bath hardware, stair parts, shutters, columns, and gable louver.

9.

During the approximate time period of 1983 through 2001, Simpson earned sales commissions of one and one-half percent (1 1/2%) on sales of lumber.

10.

During his career with Stock Building Supply and its corporate predecessors, Simpson developed a close working relationship with Metric Constructors.

11.

During the approximate time period of 1983 through 2001, Simpson procured and serviced approximately 33 multi-family jobs with Metric Constructors.

12.

For each job that Simpson procured and serviced with Metric Constructors, he earned sales commissions of three percent (3%) on sales of interior trim, exterior trim, windows, siding, roof trusses, floor trusses, interior doors, exterior doors, locks, bath hardware, stair parts, shutters, columns, and gable louver, and sales commissions of one and one-half percent (1 1/2%) on sales of lumber, with his compensation never deviating from this formula.

13.

Around the time period of early 2000, Metric Constructors was looking to enter into a purchase order with a building supplier for a job at Fort Carson in Colorado Springs, Colorado.

14.

Simpson was Stock Building Supply's lead man in Stock Building Supply's attempt to obtain a purchase order from Metric Constructors for the Fort Carson job.

15.

Carl Frinzi was the individual for Metric Constructors who made the decision as to which building supply company would supply the Fort Carson job.

16.

Around the time period of early 2000, Carl Frinzi asked Simpson if he could supply the Fort Carson job.

17.

Simpson told Frinzi that Stock Building Supply's corporate parent, Carolina Builders, also had a company in Colorado, Crissy Fowler, through which Simpson could supply the Fort Carson project.

18.

Shortly after Simpson told Frinzi that he could supply the Fort Carson project through Crissy Fowler, Frinzi had a business meeting with Glenn Simpson and Bob Gordon in Atlanta, Georgia. At this time, Gordon was Simpson's boss at Stock Building Supply.

19.

At that meeting, Frinzi made it clear that, in light of his long working relationship with Simpson, that he wanted Simpson to handle the Fort Carson account.

20.

At that meeting, Bob Gordon told Frinzi that Glenn Simpson would handle the Fort Carson account.

21.

Frinzi also had a later business dinner with Simpson and Tom Kostelecky (of the Crissy Fowler organization) in Colorado. At that dinner, Frinzi was assured by Mr. Kostelecky that Simpson would handle the Fort Carson account.

22.

Frinzi decided to give the Fort Carson job to Carolina Builders.

23.

Frinzi's primary reason for giving the job to Carolina Builders was that he had been assured that Simpson would handle the account and receive the financial benefits associated with handling such a large account.

24.

In mid-June, 2000, Bob Gordon asked Simpson to consider taking a $10,000 lump sum payment in lieu of commissions on the Metric Constructors, Fort Carson order. Simpson refused the offer.

25.

In late July, 2000, without obtaining Simpson's agreement to the change in compensation, Stock Building Supply made a direct deposit of $10,000 into Simpson's account.

26.

Simpson was eventually forced to leave Stock Building Supply in Autumn 2001 because of the way he had been treated in this matter as well as the way he had been treated on some smaller accounts after July 2000.

27.

Through the date of the filing of this Complaint, approximately thirteen million dollars ($13,000,000.00) of supplies have been purchased for the Fort Carson project, of which approximately one million dollars ($1,000,000.00) has been for lumber. Simpson is entitled to approximately $375,000.00 in commissions from the Fort Carson job, as well as future commissions earned on the Fort Carson job.

28.

Simpson is entitled to commissions on some smaller accounts.

COUNT 1
O.C.G.A. § 13-3-44(a) PROMISSORY ESTOPPEL

29.

Simpson incorporates by reference paragraphs 1-28 of this Complaint.

30.

Bob Gordon promised both Simpson and Carl Frinzi that Simpson would sell and service the Fort Carson account.

31.

Tom Kostelecky promised both Simpson and Carl Frinzi that Simpson would sell and service the Fort Carson account.

32.

Bob Gordon and Tom Kostelecky each reasonably expected that his promise would induce Simpson to give his best effort to get the Fort Carson job from Metric Constructors, and that his promise would induce Carl Frinzi to give the job to Carolina Builders.

33.

Both Simpson and Frinzi relied on the promises from Gordon and Kostelecky.

34.

Simpson may enforce the promises made to Frinzi.

35.

Injustice can be avoided only by enforcing the promises of Gordon and Kostelecky and awarding the commissions generated by the Fort Carson job to Simpson.

COUNT 2
QUANTUM MERUIT AND UNJUST ENRICHMENT

36.

Simpson incorporates by reference paragraphs 1-35 of this Complaint.

37.

To date, the Fort Carson project has generated approximately thirteen million dollars ($13,000,000) in sales for Stock.

38.

The reasonable value of the services provided by Simpson to Stock in procuring the Fort Carson job is sales commissions of three percent (3%) on sales of interior trim, exterior trim, windows, siding, roof trusses, floor trusses, interior doors, exterior doors, locks, bath hardware, stair parts, shutters, columns, and gable louver, and sales commissions of one and one-half percent (1 1/2%) on sales of lumber, which to date is approximately $375,000.

COUNT 3
BREACH OF CONTRACT

39.

Simpson incorporates by reference paragraphs 1-38 of this

Complaint.

40.

During his approximately nineteen years with Stock Building Supply and its predecessors, Simpson's past dealings with Stock regarding compensation never deviated from a formula of sales commissions of three percent (3%) on sales of interior trim, exterior trim, windows, siding, roof trusses, floor trusses, interior doors, exterior doors, locks, bath hardware, stair parts, shutters, columns, and gable louver, and sales commissions of one and one-half percent (1 1/2%) on sales of lumber.

41.

Stock breached its contract with Simpson by not allowing him to receive commissions generated from the Fort Carson job.

42.

Simpson has suffered actual damages to date of approximately $375,000 from the breach of contract regarding the Fort Carson job.

COUNT 4
Equitable Estoppel

43.

Simpson incorporates by reference paragraphs 1-42 of this Complaint.

44.

The representations by Bob Gordon and Tom Kostelecky that Simpson would sell and service the Fort Carson job were calculated to convey the impression that Simpson would receive the commissions generated by the Fort Carson job.

45.

Bob Gordon and Tom Kostelecky, individually and/or collectively, expected that Carl Frinzi would act on their representations to give the Fort Carson job to Stock Building Supply and that Simpson would continue to work extremely hard to obtain the Fort Carson job for Stock Building Supply.

46.

Bob Gordon and/or Tom Kostelecky, at the time of making their representations, knew that Stock Building Supply would not permit Simpson to receive the commissions generated by the Fort Carson job if Simpson obtained the job for Stock Building Supply.

47.

At the time that Bob Gordon and Tom Kostelecky made their respective representations that Simpson would handle the Fort Carson job, Simpson did not know that he would not receive the commissions generated by the Fort Carson job.

48.

Simpson relied on the representations by Gordon and Kostelecky that he would sell and service the Fort Carson job.

49.

Simpson's position changed prejudicially in reliance on the representations by Gordon and Kostelecky.

COUNT 5
FRAUD

50.

Simpson incorporates by reference paragraphs 1-49 of this Complaint.

51.

Bob Gordon and/or Tom Kostelecky, at the time of making their representations, knew that Stock Building Supply would not permit Simpson to receive the commissions generated by the Fort Carson job if Simpson obtained the job for Stock Building Supply.

52.

Bob Gordon and Tom Kostelecky, individually and/or collectively, intended that Carl Frinzi would act on their representations to give the Fort Carson job to Stock Building Supply and that Simpson would continue to work extremely hard to obtain the Fort Carson job for Stock Building Supply.

53.

Simpson relied on the representations by Gordon and Kostelecky that he would sell and service the Fort Carson job.

54.

Simpson was deceived by the representations by Gordon and Kostelecky that he would sell and service the Fort Carson job.

55.

Simpson has suffered damage as a result of relying on the representations by Gordon and Kostelecky that he would sell and service the Fort Carson job.

WHEREFORE, Simpson prays for the following relief:

1) That process issue and that the Defendant be served and be required to answer this Complaint as provided by law;

2) That Simpson be awarded compensatory and punitive damages for the intentional tort of fraud complained of herein;

3) That Simpson be awarded actual damages of at least $375,000 for the conduct complained of herein;

4) That the Court craft a remedy designed to avoid injustice pursuant to O.C.G.A. § 13-3-44(a);

5) That Simpson have a trial by jury;

6) That the Court assess attorney's fees and all litigation costs against the Defendants for the misconduct complained of herein;

7) And for such other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted,

Baylor B. Banks
Georgia Bar No. 036155
Attorney for Plaintiff

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Atlanta, Georgia 30326
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